

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Stephanie Dukich	Team: Squad #8	CCRB Case #: 202006163	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 09/11/2020 , Friday, 09/11/2020 10:30 AM, Friday, 09/11/2020 10:31 AM, Friday, 09/11/2020 2:00 PM	Location of Incident: Autozone store; § 87(2)(b) Hospital; 113th Precinct stationhouse, Over the phone	Precinct: 113	18 Mo. SOL 3/11/2022	EO SOL 5/4/2022	
Date/Time CV Reported Sat, 09/12/2020 9:13 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 09/12/2020 9:13 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Briana Donovan	02778	945676	SVD Z2
2. DTS Thomas Lyons	4373	946517	113 PCT
3. POM Brian Fontanella	08615	956655	113 PCT
4. POM John Ortega	10354	961042	113 PCT
5. POM Thomas Kilfeather	25605	968541	113 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Abraheem Chaudhry	14386	967809	113 PCT
2. POF Briana Johnson	26569	965225	113 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM John Ortega	Force: At 186-45 Merrick Boulevard in Queens, Police Officer John Ortega used physical force against § 87(2)(b)	
B.POM Brian Fontanella	Force: At 186-45 Merrick Boulevard in Queens, Police Officer Brian Fontanella used physical force against § 87(2)(b)	
C.POM John Ortega	Force: At 186-45 Merrick Boulevard in Queens, Police Officer John Ortega used physical force against § 87(2)(b)	
D.POM John Ortega	Abuse: At 186-45 Merrick Boulevard in Queens, Police Officer John Ortega forcibly removed § 87(2)(b) to the hospital.	
E.POM John Ortega	Force: At § 87(2)(b) Hospital in Queens, Police Officer John Ortega used physical force against § 87(2)(b)	
F.POM Thomas Kilfeather	Abuse: At 167-02 Bailsey Boulevard in Queens, Police Officer Thomas Kilfeather did not process § 87(2)(b)'s complaint regarding officers.	
G.SGT Briana Donovan	Abuse: At 167-02 Bailsey Boulevard in Queens, Sergeant Briana Donovan did not process § 87(2)(b)'s complaint regarding officers.	

Officer(s)	Allegation	Investigator Recommendation
H.DTS Thomas Lyons	Abuse: Over the phone, Police Officer Thomas Lyons did not process § 87(2)(b)'s complaint regarding officers.	

Case Summary

The CCRB received the following complaint via the CCRB's call processing system:

On September 11, 2020, at approximately 9:30 a.m., § 87(2)(b) went to the AutoZone located at 186-45 Merrick Boulevard in Queens to return brakes that she bought for her car. As she was leaving the store, two security guards approached § 87(2)(b) stood between her and the exit, and accused § 87(2)(b) of stealing an item from the store. After a few minutes, Police Officer John Ortega of the 113th Precinct and Police Officer Brian Fontanella of the 113th Precinct arrived at the location. § 87(2)(b) informed the officers that she did not take anything from the store. PO Ortega handcuffed § 87(2)(b) and allegedly pushed her with his hands against her upper back and right side (**Allegation A: Force,** § 87(2)(g) PO Fontanella allegedly placed his hand on § 87(2)(b)'s left side and pushed her as well (**Allegation B: Force,** § 87(2)(g) As she was walking, PO Ortega allegedly kicked her ankles (**Allegation C: Force,** § 87(2)(g)

PO Ortega told § 87(2)(b) that an ambulance was coming to remove her to a psychiatric facility, and § 87(2)(b) verbally refused to go (**Allegation D: Abuse of Authority,** § 87(2)(g) Once the ambulance arrived at the hospital, PO Ortega allegedly pulled § 87(2)(b) out of the ambulance by her arm, causing her to almost fall (**Allegation E: Force,** § 87(2)(g)

At around 2:00 p.m. on the same day, § 87(2)(b) went to the 113th Precinct stationhouse. She asked Police Officer Thomas Kilfeather of the 113th Precinct to file a report against the officers who removed her to the hospital that day. PO Kilfeather allegedly gave § 87(2)(b) a CCRB complaint form and instructed her to file the complaint by calling the number on the form (**Allegation F: Abuse of Authority,** § 87(2)(g) Sergeant Briana Donovan of the 113th Precinct approached § 87(2)(b) and § 87(2)(b) let her know that she wanted to file a complaint against two officers. Sgt. Donovan allegedly told § 87(2)(b) that she should file a complaint using the CCRB complaint form that PO Kilfeather gave her (**Allegation G: Abuse of Authority,** § 87(2)(g)

Later that day, § 87(2)(b) called Detective Lyon of the 113th Precinct and left him a voicemail stating that she wanted to file a complaint against two officers, described the officers, and requested their names. Det. Lyon called § 87(2)(b) back shortly after and allegedly explained that he was not familiar with either of the officers she described, but that he would try to get their names (**Allegation H: Abuse of Authority,** § 87(2)(g)

BWC from PO Ortega, PO Fontanella, PO Johnson, and PO Chaudry was obtained by the investigation (Board Review 01).

113th Precinct stationhouse footage was obtained by the investigation (Board Review 02).

§ 87(2)(b) was not charged because of this incident.

Findings and Recommendations

Allegation (A) Force: At 186-45 Merrick Boulevard in Queens, Police Officer John Ortega used physical force against § 87(2)(b)

Allegation (B) Force: At 186-45 Merrick Boulevard in Queens, Police Officer Brian Fontanella used physical force against § 87(2)(b)

Allegation (C) Force: At 186-45 Merrick Boulevard in Queens, Police Officer John Ortega

used physical force against § 87(2)(b)

In her CCRB statement on September 18, 2021, § 87(2)(b) stated that on September 11, 2020, at approximately 9:30 a.m., she went to return a pair of brakes to the AutoZone located at 186-45 Merrick Boulevard in Queens. § 87(2)(b) entered the store, approached one of the cash registers, and explained to an AutoZone employee working the register, CV 1, that she needed help retrieving brakes that she wanted to return from her car. CV1 instructed § 87(2)(b) to wait for help by her vehicle. As § 87(2)(b) approached the exit to the store, two AutoZone security guards, CV2 and CV3 approached her, said that she had stolen something from the store and searched her. CV2 and CV3 did not recover any stolen items.

After a few minutes, PO Ortega and PO Fontanella arrived at the location. AutoZone employees informed PO Ortega that § 87(2)(b) had stolen an item from the store and had done so before. § 87(2)(b) informed the officers that she did not have anything in her pockets and that she did not take anything from the store. PO Ortega told her that she had just stolen from a Stop and Shop earlier that day. § 87(2)(b) informed him that she had not been to Shop and Stop that day. PO Ortega handcuffed § 87(2)(b)

§ 87(2)(b) began walking towards the store's exit. As she walked, PO Ortega pushed § 87(2)(b) with his hands against her upper back and right side and at one point kicked her ankles. PO Fontanella pushed her as well. Either PO Fontanella or PO Ortega informed § 87(2)(b) that she was arrested because she had stolen from a Shop and Stop and there was a warrant out for her arrest (Board Review 03).

PO Ortega testified to the CCRB on April 6, 2021, that on September 11, 2020, he was assigned to sector patrol with PO Fontanella. At approximately 10:30 a.m., PO Ortega and PO Fontanella received a call over the radio that § 87(2)(b) was stealing from an AutoZone. PO Ortega could not recall what else was said over the radio. PO Ortega stated that prior to this incident there had been a call from the Stop and Shop across the street from the AutoZone about a woman refusing to leave and making a scene, however when the officers had arrived, she was already gone. PO Ortega believed § 87(2)(b) to be the same woman.

When he arrived with PO Fontanella, § 87(2)(b) was standing behind the counter in the employees only area. A security employee told PO Ortega that they just wanted § 87(2)(b) to leave. PO Ortega and PO Fontanella told § 87(2)(b) that she needed to leave and could not be standing behind the counter. § 87(2)(b) refused to move and refused to leave the store. The officers told § 87(2)(b) that they could arrest her if she refused to leave. PO Ortega stated that they could have arrested § 87(2)(b) for trespassing because she was on private property and told to leave. § 87(2)(b) continued to refuse to leave the AutoZone. § 87(2)(b) was speaking with a raised voice but was not yelling or cursing the officers out.

PO Ortega and PO Fontanella handcuffed § 87(2)(b) and escorted her out of the store. § 87(2)(b) did not do anything to resist, and the officers did not need to use any force. PO Ortega stated he did not use any profanity when speaking to § 87(2)(b). PO Ortega stated he did not believe any officers used any profanity when speaking to § 87(2)(b). PO Ortega stated that neither him nor any other officer kicked § 87(2)(b)'s ankles or kneed her (Board Review 04).

PO Fontanella testified to the CCRB on April 6, 2021, that on September 11, 2020, he was assigned to sector patrol with PO Ortega. At 10:21 a.m., PO Ortega and PO Fontanella received a call over the radio that § 87(2)(b) was stealing from a store. PO Fontanella could not recall what

information they received over the radio. When the officers first arrived at the store they met with the store's employees and they told the officers that § 87(2)(b) was refusing to leave.

PO Fontanella and PO Ortega then walked over to § 87(2)(b) who was standing behind the store counter. PO Ortega and PO Fontanella both told her to leave the store and she refused by backing away from the officers and verbally refusing to leave. PO Fontanella and PO Ortega approached § 87(2)(b) and handcuffed her. PO Fontanella stated if someone is refusing to leave a store then officers can arrest them for trespassing. PO Fontanella stated that neither him nor any officer pushed § 87(2)(b) kned § 87(2)(b) or kicked her ankles. He did not use profanity during the incident, nor did any other officer (Board Review 05).

In PO Fontanella's BWC of the incident, at 1:29 a security guard reports that § 87(2)(b) was a disturbance and PO Fontanella instructs § 87(2)(b) to leave the store at 01:45 because she is on private property, and she refuses. He instructs her to leave again at 03:56 and at 04:35 but she refuses. At 04:52 PO Ortega tells § 87(2)(b) to put her hands behind her back. § 87(2)(b) refuses and tells them that she cannot breathe and will leave the store. At 05:06 PO Ortega takes hold of § 87(2)(b) by her right arm and PO Fontanella takes hold of her by her left arm. PO Ortega then handcuffs § 87(2)(b). At 05:49, § 87(2)(b) walks out of the store and PO Ortega follows her outside at about one foot away (Board Review 01).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (D) Abuse of Authority: At 186-45 Merrick Boulevard in Queens, Police Officer John Ortega forcibly removed § 87(2)(b) to the hospital.

It is undisputed that PO Ortega forcibly removed § 87(2)(b) to the hospital.

In her CCRB statement, § 87(2)(b) stated that after she was handcuffed and taken outside, PO Ortega told her that an ambulance was on its way to take her to a psychiatric ward. § 87(2)(b) told PO Ortega that she was not going anywhere. A few minutes after § 87(2)(b) was escorted out of the store an ambulance arrived on the scene with two EMTs. PO Ortega and PO Fontanella spoke with the EMTs privately, so § 87(2)(b) was unable to hear their conversation. PO Ortega then approached § 87(2)(b) and informed her that they were transporting her to § 87(2)(b) Hospital. § 87(2)(b) explained to PO Ortega that she did not feel comfortable going to § 87(2)(b) Hospital in the middle of a pandemic. PO Ortega told her that she would be taken to § 87(2)(b) Hospital regardless of how she felt. § 87(2)(b) was escorted into the ambulance with EMT1 and EMT2. § 87(2)(b) informed the EMTs that she wanted to be taken to § 87(2)(b) Medical Center as opposed to § 87(2)(b) Hospital. EMT1 and EMT2 agreed, and PO Ortega rode in the ambulance with § 87(2)(b) to § 87(2)(b) Medical Center. PO Fontanella drove behind them in a police vehicle (Board Review 03).

In his CCRB testimony, PO Ortega stated that he was the only officer who determined that § 87(2)(b) was emotionally disturbed and that he made the decision to call the ambulance. He did not recall whether any of the AutoZone employees related anything about § 87(2)(b)'s demeanor to him before he interacted with her. At some point during the incident, PO Ortega called over the radio for an ambulance to have § 87(2)(b) evaluated because she appeared to be going, "through something." PO Ortega stated that § 87(2)(b)'s refusal to leave the store and standing in the employee only section made him believe that she was a potential harm to herself and others since it made PO Ortega believe she was unpredictable. PO Ortega stated that he believed § 87(2)(b) also requested for an ambulance due to her asthma.

When EMS arrived, PO Ortega explained what had happened and they determined that she needed to go to the hospital. PO Ortega stated that EMS are the medical professionals, and that they ultimately made the decision to take § 87(2)(b) to the hospital (Board Review 04).

PO Fontanella testified to the CCRB that PO Ortega called EMS. PO Fontanella could not recall if he or PO Ortega determined that § 87(2)(b) was emotionally disturbed, nor did he recall whether § 87(2)(b) was doing anything that made her appear emotionally disturbed. PO Fontanella stated if someone was acting erratically, specifically by not listening to the officers, saying they see things, or speaking incoherently, then they could be considered an emotionally disturbed person. PO Fontanella could not recall if § 87(2)(b) was a threat to herself or others. PO Fontanella did not recall speaking to EMS (Board Review 05).

In PO Ortega's BWC from the incident, § 87(2)(b) requests an ambulance at 1:18 two times. At 4:30, § 87(2)(b) requests an ambulance again and PO Ortega says that he will call one for her. § 87(2)(b) informs the officers that she cannot breathe. She requests an ambulance again at 5:50 and repeats that she cannot breathe. PO Fontanella says over the radio, "Nothing further here, it's going to be an EDP." He also requests a boss. At 7:15, § 87(2)(b) says that she wants PO Fontanella's and PO Ortega's boss before she wants the ambulance.

At 31:57 EMS arrive on scene. PO Ortega approaches a female EMT and informs her that the Autozone staff called 911 and reported § 87(2)(b) for stealing, but that § 87(2)(b) was just, "acting a mess" and refused to leave the store. The EMT asks PO Ortega if § 87(2)(b) is an emotionally disturbed person; he replies that § 87(2)(b) is. He tells the EMT that § 87(2)(b) had caused a scene at a Shop and Stop earlier, and that she appeared to "have some issues". At 32:40, § 87(2)(b) says that she is not going to a hospital. PO Fontanella replies that she has to get in the ambulance and talk to them. § 87(2)(b) says that she will drive herself to the hospital. PO Ortega tells § 87(2)(b) "They have to talk to you in the ambulance anyway, so" and she replies that the officers could talk to her out here. PO Fontanella tells her at 32:55 that it is not her choice, and that she must go to the ambulance. § 87(2)(b) walks into the ambulance at 33:50 (Board Review 01).

Patrol Guide Procedure 221-13 defines an emotionally disturbed person as "a person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others." When a uniformed member of the service reasonably believes that a person who is apparently mentally ill or emotionally disturbed must be taken into protective custody because the person is conducting himself in a manner likely to result in a serious injury to himself or others, they must request an ambulance, if one has not already been dispatched.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (E) Force: At § 87(2)(b) Hospital in Queens, Police Officer John Ortega used physical force against § 87(2)(b)

§ 87(2)(b) stated to the CCRB that once the ambulance arrived at the hospital, PO Ortega grabbed § 87(2)(b) by her left arm and told her that he would help her out of the ambulance. § 87(2)(b) informed PO Ortega that she would have balance if he allowed her to exit the ambulance on her own. PO Ortega told § 87(2)(b) that she could not leave the ambulance on her own, then pulled § 87(2)(b) out of the ambulance by her arm, causing her to almost fall (Board Review 03).

PO Ortega testified to the CCRB that when going into and coming out of the ambulance, he and PO Fontanella helped § 87(2)(b) by holding her arms to make sure she did not fall. He denied pulling her out of the ambulance forcefully (Board Review 04).

PO Ortega's and PO Fontanella's BWC was deactivated once § 87(2)(b) entered the ambulance, so there is no BWC capturing this portion of the incident (Board Review 01).

§ 87(2)(b), § 87(2)(g)

Allegation (F) Abuse of Authority: At 167-02 Bailsey Boulevard in Queens, Police Officer Thomas Kilfeather did not process § 87(2)(b)'s complaint regarding officers.
Allegation (G) Abuse of Authority: At 167-02 Bailsey Boulevard in Queens, Sergeant Briana Donovan did not process § 87(2)(b)'s complaint regarding officers.
Allegation (H) Abuse of Authority: Over the phone, Police Officer Thomas Lyons did not process § 87(2)(b)'s complaint regarding officers.

§ 87(2)(b) stated that at 2:00 p.m. on September 11, 2020, she drove to the 113th Precinct stationhouse. § 87(2)(b) spoke with several officers outside and requested to file a complaint and to speak to "PO Johnson." PO Kilfeather gave § 87(2)(b) a paper CCRB complaint form and instructed her to file the complaint by calling the number on the form. § 87(2)(b) continued to wait for PO Johnson and was approached by Sgt. Donovan. § 87(2)(b) informed Sgt. Donovan that she wanted to file a report against PO Ortega and PO Fontanella. Sgt. Donovan told § 87(2)(b) that she should file a complaint using the CCRB complaint form PO Kilfeather gave her. § 87(2)(b) waited for another 30 minutes before leaving the stationhouse without seeing PO Johnson.

Later that day, § 87(2)(b) called the Community Liaison Officer, Det. Lyon, and left him a voicemail stating that she wanted to file a report against PO Ortega and PO Fontanella and

requested their names. Det. Lyon called § 87(2)(b) back later that night and explained that he was not familiar with either PO Ortega or PO Fontanella but would try to get their names for her (Board Review 03).

PO Kilfeather testified to the CCRB on June 25, 2021 that on September 11, 2020, he was working as stationhouse security. At approximately 2:00 p.m., § 87(2)(b) approached him outside and asked to file a complaint. PO Kilfeather provided her with a form to file a complaint. He told her she needed to write out her complaint and then she could either mail the form into the precinct or give the form directly to him or another officer. § 87(2)(b) asked PO Kilfeather the names of the officers involved in her incident. PO Kilfeather told § 87(2)(b) he could go try to find their names and asked for her to provide information on the job in question so that he could find it.

PO Kilfeather left and got the names of the officers. When he came back, § 87(2)(b) asked him to write her complaint for her on the form. PO Kilfeather explained that they cannot write the complaint for her and that she needs to do it herself. § 87(2)(b) requested for PO Kilfeather to get his sergeant. PO Kilfeather left and came back with Sgt. Donovan, who explained to § 87(2)(b) that she needed to write her complaint herself. Sgt. Donovan then sat with § 87(2)(b) and assisted her in filling out the form. While Sgt. Donovan was doing this, PO Kilfeather's tour ended so he left.

PO Kilfeather stated that typically when a civilian asks file a complaint, he provides them with the complaint form and once the civilian fills it out, he would bring the form to his sergeant and ask if they needed any additional information. PO Kilfeather stated that he believes if there was no additional information needed his sergeant would then file the complaint at the precinct. PO Kilfeather stated that Sgt. Donovan told § 87(2)(b) that she could file the complaint over the phone if she wanted to, and that he believed § 87(2)(b) responded that she was already at the stationhouse, so she wanted to file the complaint there (Board Review 06).

In her CCRB testimony on June 10, 2021, Sgt. Donovan stated that on September 11, 2020, at approximately 2:00 p.m., she was working as a patrol supervisor. Sgt. Donovan did not recall ever having an interaction with § 87(2)(b) nor any civilian who was trying to file a complaint about a removal to the hospital.

Sgt. Donovan stated that typically when a civilian comes to file a complaint in person, she provides them with the complaint form and then allows them to make the decision to either file the form with her or call or email the CCRB to file their complaint. Sgt. Donovan stated that she has never had to file the paperwork for a complaint so if someone provided her with a filled out complaint form she would take the forms and then refer to the patrol guide to determine what to do with them.

Sgt. Donovan was shown a clip from stationhouse footage starting at 01:29:35 hours. Sgt. Donovan stated that this did not help her independent recollection of the incident. Sgt. Donovan did not know which form she was helping § 87(2)(b) with. Sgt. Donovan was shown another clip from footage labeled "Vestibule" starting at 01:37:52. Sgt. Donovan stated that she does not remember why § 87(2)(b) took the form with her when she left (Board Review 07).

Det. Lyons testified to the CCRB that on September 11, 2020, he was working as the Neighborhood Coordination Officer. He stated that he had no recollection of a phone call with § 87(2)(b) on this day. While he had several phone conversations and meetings with § 87(2)(b) Det. Lyons does not recall any conversation when she wanted to make a complaint against officers.

Det. Lyons stated that if a civilian calls him asking to file a complaint about a police officer he will take the complaint from the civilian and refer it to the CCRB. He stated that the protocol does not change whether he can identify the officers involved or not (Board Review 08).

In 113th stationhouse surveillance footage titled Main Entrance # 1, which captures the porch, sidewalk, and stairs, directly in front of the 113th Precinct stationhouse, § 87(2)(b) walks up the handicap ramp onto the porch in front of the stationhouse at 02:10:30. At 02:20:00, § 87(2)(b) appears to speak with PO Kilfeather. At 2:39:00 minutes PO Kilfeather approaches § 87(2)(b) and hands her a piece of paper. PO Kilfeather and § 87(2)(b) speak for a little over a minute and then PO Kilfeather walks away. At 2:42:53 minutes PO Kilfeather comes back outside and speaks to § 87(2)(b) again for approximately fifteen seconds before going back into the stationhouse. At 03:14:16 hours PO Kilfeather speaks to § 87(2)(b) again and then goes into the stationhouse.

At 03:23:18, Sgt. Donovan comes outside and speaks to § 87(2)(b) for several minutes. She leads § 87(2)(b) into the stationhouse. At 3:41:12 hours § 87(2)(b) walks outside of the stationhouse and walks down the disabled accessible ramp and leaves (Board Review 02).

In the 113th stationhouse surveillance footage titled “1st FL Vestibule,” Sgt. Donovan leads § 87(2)(b) inside to the small foyer at 3:29:36 and appears to help § 87(2)(b) fill out a complaint form. At 03:36:00, § 87(2)(b) folds the form a few times as Sgt. Donovan is saying something to her. § 87(2)(b) unfolds the forms at 03:39:29 and writes something on a small piece of paper. Sgt. Donovan takes the piece of paper at 03:39:40 and puts it in the right pocket of her uniform top. 03:40:50, Sgt. Donovan leaves the foyer without § 87(2)(b)'s complaint form and walks further into the stationhouse. § 87(2)(b) folds the complaint form, puts it in her bag, and exits the foyer (Board Review 02).

According to NYPD Patrol Guide Procedure 207-31, when a civilian wishes to file a complaint a stationhouse, an officer should interview the civilian, provide a civilian complaint report, to be prepared in the complainant's own handwriting. An officer must also provide assistance if needed to complete the form. If an individual does not want to immediately make a complaint, they should be provided with the first copy of the civilian complaint report and be advised that the complaint may be delivered in person, taken over the phone, or sent by mail to any precinct or office of the Police Department. In addition, the civilian is to be provided with the number of the Civilian Complaint Review Board (Board Review 09).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

